

REMARKS

Claims 55-85 are currently pending in the present application. In the Advisory Action, the Examiner has maintained the 35 U.S.C. §101 rejection of claims 63, 66, and 75, and the 35 U.S.C. §102 rejection of claims 55-56, 67-71, 75, and 81-85. By this amendment, Applicants have amended claims 63, 66, and 75 as recommended by the Examiner to overcome the §101 rejection. Reconsideration and withdrawal of this rejection are respectfully requested. Applicants have amended claims 55 and 85 to overcome the §102 rejection as explained below.

Applicants have added new claims 86 to 90 to better define Applicants' invention. New dependent claim 86, which is based on part of claim 57 and claim 64, recites that in a closed clamping position, the second tube clamping member is located on the same side of the tube as the cap, and thus is located on top of the first tube clamping member. The cap ensures that the occipital strap, and therefore the first positioning means and the tube, remain in place. New dependent claim 87 recites that the first positioning means has a portion extending above the tube clamping means and a portion extending below the tube clamping members. New independent claim 88 combines the limitations of independent claim 55 and dependent claim 87, while new dependent claims 89 and 90 are directed to elements of the second positioning means.

The Examiner rejected claims 55-56, 67-70, 75, 81, and 84-85 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,555,881 (Rogers, *et al.*). The Examiner further rejected claims 55-56, 67-71, 75, and 81-84 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 4,249,529 (Nestor, *et al.*).

Applicant respectfully traverses these rejections.

In order for a reference to anticipate a claim under § 102, that reference must disclose every claimed limitation of the claim, either explicitly, or under the principle of inherency.

Applicants' claim 55, and new claim 88, are directed to an assembly for fixing a tube to a patient's mouth that includes a tube clamping means and a securing means. The tube clamping means further includes a first positioning means, a first tube clamping member, a second tube clamping member, and a means for hingeable movement connecting the first and second tube clamping members. The first positioning means has

a portion that extends above the tube clamping members, and a portion that extends below the tube clamping members. The second clamping member is moveable between a closed position, in which the tube is clamped between the first and second clamping members with the first clamping member extending under the tube, and an open position, in which the tube can find support on the first tube clamping member which provides an upwardly facing bearing surface for the tube. The second clamping member extends above the tube when in a closed position, and its movement is over and above the tube being clamped. This movement of the second clamping member can be accomplished without movement of the first clamping member relative to the second clamping member. Applicant's claim 85 is directed to a method of fixing a tube to the mouth of a patient that includes providing the assembly of claim 55.

Rogers is directed to a tube positioner wherein the tube clamping member that extends below the tube is moveable relative to the upper, fixed, tube clamping member. This clearly differs from the assembly claimed in Applicant's claims 55 and 88, in which the lower clamping member provides an upwardly facing bearing surface that supports the tube. Furthermore, the upper clamping means of Rogers cannot move in the manner of Applicant's second clamping member, as claimed in claim 85. In addition, the device disclosed in Rogers lacks a positioning means with a portion extending above the tube clamping members and a portion extending below the tube clamping members. Rogers' tube positioning device has a portion that extends over the tube clamping means, not separate portions that extend, respectively, over and under the tube clamping members. The Examiner takes the position that one could simply turn the positioning device of Rogers over to obtain the clamping device claimed by Applicants. However, the positioner of Rogers' device is intended to be attached to a strap that extends across a patient's upper lip, below the patient's nose. Turning the positioner of Rogers' device upside down would require that the strap across the patient's chin, below the patient's lower lip, a position that is less secure than the upper lip position for which it is intended. The portion of Rogers' position device depicted as extending over the tube clamping member would now extend below the tube clamping members. However, as stated above, Rogers' device lacks separate portions that extends, respectively, over and under the tube clamping members. Since Rogers does not disclose or suggest every claimed

feature of Applicant's claims 55 and 85, Rogers does not anticipate Applicant's claims 55 and 85. Reconsideration and withdrawal of these rejections are respectfully requested.

Nestor is directed to a tube holder that includes a pair of cylindrical bosses that extend outward from a base plate, each of which further includes a tangential arm extending downward and terminating at a hinge 16 connecting to one of a pair of arcuate shaped jaws. The arcuate jaws are in turn connected by another hinge 20 between the hinges 16. Each of the pair of arcuate shaped jaws pivots about its respective hinge 16 and the connecting hinge 20 from an open position to a closed position. Furthermore, the geometry of the base plate, the arcuate jaws and the tangential arms of the cylindrical bosses that connect to the jaws does not permit sole movement of one jaw while preventing movement of the other jaw with respect to the base plate. In addition, Nestor does not disclose or suggest a first clamping member providing an upwardly facing bearing surface on which the tube finds support both before and after closing, as claimed in Applicant's claims 55 and 88. In addition, the tube holder disclosed in Nestor lacks a positioning means with a portion extending above the arcuate jaws and a portion extending below the arcuate jaws. Nestor's tube holder has a portion that extends over the arcuate jaws, not separate portions that extend, respectively, over and under the arcuate jaws. The same considerations regarding turning the device over discussed concerning Rogers' positioning device apply equally to the device of Nestor. Since Nestor does not disclose or suggest all of the elements of Applicant's claim 55, Nestor does not anticipate Applicant's claim 55. Reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

Applicant urges that claims 55-85, as amended, and new claims 86-90, are in condition for allowance. Early and favorable action is earnestly solicited. If the Examiner believes that issues can be resolved through a telephone interview, the Examiner is urged to call the undersigned at the telephone number listed below.

Respectfully submitted,



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